

AMENDED IN ASSEMBLY JUNE 28, 2004

SENATE BILL

No. 1344

Introduced by Senator Margett

February 18, 2004

An act to amend Section 1877.1 of the Insurance Code, and to amend Section 1543 of the Penal Code, relating to insurance fraud.

LEGISLATIVE COUNSEL'S DIGEST

SB 1344, as amended, Margett. Insurance: fraud: records.

Existing law authorizes certain governmental agencies to request that an insurer or other specified person release to the agency any relevant information deemed important relating to a workers' compensation fraud investigation, and allows insurers to notify any of these agencies of suspected fraud. Existing law prohibits these agencies from releasing this information to any person not authorized to receive the information.

This bill would include the Department of Corrections among the agencies authorized to request and receive information regarding workers' compensation fraud.

Existing law provides that records of the identity, diagnosis, prognosis, or treatment of any patient maintained by a health care facility that are not privileged records required to be secured by a certain special master procedure, or records required by law to be confidential, shall only be disclosed to law enforcement agencies under specified circumstances. Existing law provides that these provisions shall not apply to various types of investigations, including investigations of insurance fraud performed by the Department of Insurance or the California Highway Patrol.

This bill would add investigations of insurance fraud performed by the Department of Corrections *and conducted by peace officers in that department's Office of Internal Affairs* to the investigations exempted from the provisions regarding the disclosure of records.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1877.1 of the Insurance Code is
2 amended to read:

3 1877.1. The following definitions govern the construction of
4 this article, unless the context requires otherwise:

5 (a) "Authorized governmental agency" means the district
6 attorney of any county, the office of the Attorney General, the
7 Department of Insurance, the Department of Industrial Relations,
8 the Employment Development Department, the Department of
9 Corrections, and any licensing agency governed by the Business
10 and Professions Code.

11 (b) "Relevant" means having a tendency to make the existence
12 of any fact that is of consequence to the investigation or
13 determination of an issue more probable or less probable than it
14 would be without the information.

15 (c) "Insurer" means an insurer admitted to transact workers'
16 compensation insurance in this state, the State Compensation
17 Insurance Fund, an employer that has secured a certificate of
18 consent to self-insure pursuant to subdivision (b) or (c) of Section
19 3700 of the Labor Code, or a third-party administrator that has
20 secured a certificate pursuant to Section 3702.1 of the Labor Code.

21 (d) "Licensed rating organization" means a rating
22 organization licensed by the Insurance Commissioner pursuant to
23 Section 11750.1.

24 (e) Information shall be deemed important if, within the sole
25 discretion of the authorized governmental agency, that
26 information is requested by that authorized governmental agency.

27 SEC. 2. Section 1543 of the Penal Code is amended to read:

28 1543. (a) Records of the identity, diagnosis, prognosis, or
29 treatment of any patient maintained by a health care facility which
30 are not privileged records required to be secured by the special
31 master procedure in Section 1524, or records required by law to be



confidential, shall only be disclosed to law enforcement agencies pursuant to this section:

(1) In accordance with the prior written consent of the patient; or

(2) If authorized by an appropriate order of a court of competent jurisdiction in the county where the records are located, granted after application showing good cause therefor. In assessing good cause, the court:

(A) Shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services;

(B) Shall determine that there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution; or

(3) By a search warrant obtained pursuant to Section 1524.

(b) The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he or she ceases to be a patient.

(c) Except where an extraordinary order under Section 1544 is granted or a search warrant is obtained pursuant to Section 1524, any health care facility whose records are sought under this chapter shall be notified of the application and afforded an opportunity to appear and be heard thereon.

(d) Both disclosure and dissemination of any information from the records shall be limited under the terms of the order to assure that no information will be unnecessarily disclosed and that dissemination will be no wider than necessary.

This chapter shall not apply to investigations of fraud in the provision or receipt of Medi-Cal benefits, investigations of insurance fraud performed by the Department of Insurance, ~~the Department of Corrections~~, or the California Highway Patrol, *investigations of workers' compensation insurance fraud performed by the Department of Corrections and conducted by peace officers specified in paragraph (2) of subdivision (d) of Section 830.2*, and investigations and research regarding occupational health and safety performed by or under agreement with the Department of Industrial Relations. Access to medical records in these investigations shall be governed by all laws in effect at the time access is sought.

1 (e) Nothing in this chapter shall prohibit disclosure by a
2 medical facility or medical provider of information contained in
3 medical records where disclosure to specific agencies is mandated
4 by statutes or regulations.

5 (f) This chapter shall not be construed to authorize disclosure
6 of privileged records to law enforcement agencies by the
7 procedure set forth in this chapter, where the privileged records are
8 required to be secured by the special master procedure set forth in
9 subdivision (c) of Section 1524 or required by law to be
10 confidential.

